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## TRANSMITTAL FORM

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Total Number of Pages in This Submission

5

Application Number

10/821,383

Filing Date

04/09/2004

First Named Inventor

Christopher H. Porter

Art Unit

3763

Examiner Name

Aamer S. Ahmed

Attorney Docket Number

203/505 US; MB-104

### ENCLOSURES (Check all that apply)

|   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form                  | <input type="checkbox"/> Drawing(s)                                       | <input type="checkbox"/> After Allowance Communication to TC                            |
| <input type="checkbox"/> Fee Attached                                     | <input type="checkbox"/> Licensing-related Papers                         | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences     |
| <input checked="" type="checkbox"/> Amendment/Reply                       | <input type="checkbox"/> Petition   | <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final                                      | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information  |
| <input type="checkbox"/> Affidavits/declaration(s)                        | <input type="checkbox"/> Power of Attorney, Revocation                    | <input type="checkbox"/> Status Letter  |
| <input type="checkbox"/> Extension of Time Request                        | <input type="checkbox"/> Change of Correspondence Address                 | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):         |
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| <input type="checkbox"/> Reply to Missing Parts/Incomplete Application    | <input type="checkbox"/> Landscape Table on CD                            |   |
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### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

|              |                            |          |        |
|--------------|----------------------------|----------|--------|
| Firm Name    | Freilich, Hombaker & Rosen |          |        |
| Signature    |                            |          |        |
| Printed name | Arthur Freilich            |          |        |
| Date         | 16 February 2006           | Reg. No. | 19,281 |

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I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

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| Signature             |                 |      |                  |
| Typed or printed name | Arthur Freilich | Date | 16 February 2006 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL

## For FY 2006

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 0.00

### Complete if Known

|                      |                       |
|----------------------|-----------------------|
| Application Number   | 10/821,383            |
| Filing Date          | 04/09/2004            |
| First Named Inventor | Christopher H. Porter |
| Examiner Name        | Aamer S. Ahmed        |
| Art Unit             | 3763                  |
| Attorney Docket No.  | 203/505 US; MB-104    |

### METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_

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### FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

#### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

| Application Type | FILING FEES |                       | SEARCH FEES |                       | EXAMINATION FEES |                       | Fees Paid (\$) |
|------------------|-------------|-----------------------|-------------|-----------------------|------------------|-----------------------|----------------|
|                  | Fee (\$)    | Small Entity Fee (\$) | Fee (\$)    | Small Entity Fee (\$) | Fee (\$)         | Small Entity Fee (\$) |                |
| Utility          | 300         | 150                   | 500         | 250                   | 200              | 100                   |                |
| Design           | 200         | 100                   | 100         | 50                    | 130              | 65                    |                |
| Plant            | 200         | 100                   | 300         | 150                   | 160              | 80                    |                |
| Reissue          | 300         | 150                   | 500         | 250                   | 600              | 300                   |                |
| Provisional      | 200         | 100                   | 0           | 0                     | 0                | 0                     |                |

#### 2. EXCESS CLAIM FEES

##### Fee Description

Each claim over 20 (including Reissues)

Fee (\$)  
50

Small Entity Fee (\$)  
25

Each independent claim over 3 (including Reissues)

200

100

Multiple dependent claims

360

180

Total Claims Extra Claims Fee (\$)

- 20 or HP = x =

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims Extra Claims Fee (\$)

- 3 or HP = x =

HP = highest number of independent claims paid for, if greater than 3.

##### Multiple Dependent Claims

Fee (\$)

Fee Paid (\$)

#### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$)

- 100 = / 50 = (round up to a whole number) x =

Fees Paid (\$)

#### 4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge):

#### SUBMITTED BY

Signature

Registration No.  
(Attorney/Agent) 19,281

Telephone 818-678-6408

Name (Print/Type) Arthur Freilich

Date 16 February 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:  
Christopher H. Porter

Examiner : Aamer S. Ahmed  
Art Unit: 3763

Applic.: 10/821,383

Filed: 04/09/2004

For: PERCUTANEOUSLY IMPLANTABLE  
MEDICAL DEVICE CONFIGURED TO  
PROMOTE TISSUE INGROWTH

Commissioner for Patents  
Alexandria, VA 22313-1450

AMENDMENT

The Office Action dated 11/16/2005 has been carefully studied. It is noted that claims 1-9, 13, and 15-21 have been rejected under 35 U.S.C. 102(b) as anticipated by de Groot and claim 14 has been rejected under 35 U.S.C. 103 as unpatentable over de Groot in view of Ellis. Favorable reconsideration is courteously requested.

Applicants' invention is directed to a medical device intended to be surgically implanted in a patient's body. The device includes a stud configured to project percutaneously outward through the patient's skin. In accordance with the invention, the stud longitudinal peripheral surface carries a longitudinally extending porous layer (e.g., 70 in Figure 5). Additionally, a shoulder surface (oriented perpendicular to the stud longitudinal surface) carries a laterally extending porous layer (e.g., 80 in Figure 5). The longitudinally and laterally extending porous layers are configured to promote tissue ingrowth along perpendicular surfaces which together form an especially effective bacteria resistant barrier and create a very effective anchoring for the device. It is respectfully submitted that the cited de Groot reference fails to suggest the use of perpendicular porous layers.

Accordingly, the Examiner is courteously requested to reconsider the de Groot teachings in view of Applicant's comments herein. De Groot describes a percutaneous implant comprised of a subcutaneous part 1 and a percutaneous part 10. The subcutaneous part 1 comprises a mesh sheet 2 which functions to promote tissue ingrowth. Note in de

1 Groot Figure 2 that the mesh sheet 2 is implanted substantially parallel to the patient's skin  
2 20. The mesh sheet 2 carries a holding member 3 which includes a round hole having an  
3 internal screw thread 4. The percutaneous part 10 comprises a tubular structure having an  
4 external screw thread 14 configured to mate with the holding member internal screw thread 4.  
5 A hollow tube 30 for transferring fluids extends through the bore of the tubular structure 10.

6 As noted in de Groot column 5, line 4, "during the healing process, the skin 20 will  
7 adhere to the percutaneous part 10" (i.e., the longitudinal surface of the tubular structure 10)  
8 "in a manner comparable to the manner in which gums adhere to a tooth". Thus, de Groot  
9 fails to suggest the use of a porous layer on the longitudinally extending surface of the  
10 percutaneous tubular structure for promoting tissue ingrowth. Rather, de Groot's teaching of  
11 using a mesh sheet for promoting tissue ingrowth is limited to subcutaneously implanting the  
12 sheet substantially parallel to the user's skin. Accordingly, de Groot fails to suggest  
13 applicants' teaching of providing porous layers extending both longitudinally and laterally for  
14 enabling tissue ingrowth along perpendicular surfaces to enhance bacteria resistance and  
15 device anchoring.

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1 It is urged that Applicants' independent claims clearly recite the features distinguishing  
2 the present invention over de Groot. More particularly, note that applicants' independent  
3 claim 1 is limited to an implantable medical device having a stud configured to project  
4 percutaneously through a patient's skin in which a porous layer is mounted on the stud  
5 longitudinal surface and on a shoulder surface oriented substantially perpendicular to the  
6 longitudinal surface. Independent method claim 16 is similarly limited. Inasmuch as neither  
7 de Groot nor Ellis suggest the provision of substantially perpendicular porous layers for  
8 promoting tissue ingrowth and enhancing bacteria resistance and anchoring, it is courteously  
9 urged that all of the pending claims patentably distinguish the invention. Accordingly,  
10 favorable reconsideration is respectfully requested

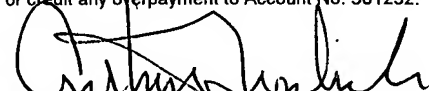
11  
12 Respectfully submitted,

13 

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21  
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24  
25 **DEPOSIT ACCOUNT AUTHORIZATION:**

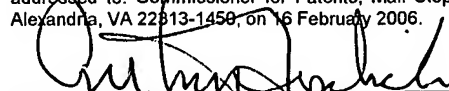
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ARTHUR FREILICH